IN THE HIGH COURT OF JUDICATURE AT PATNA
SLA No.51 of 2007
NATHUNI SINGH
Versus
STATE OF BIHAR & ANR
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5 28-7-2008 The complainant, who has filed this Special leave to appeal, contends that Opposite party no.2 was convicted by the trial court. However, against the order of conviction, he preferred an appeal before the Sessions Judge, Rohtas, Bhabua being Cr.Appeal No.12 of 1993 and the learned Sessions Judge by the impugned judgment and order dated 28.5.2007 acquitted him of the charges.

Learned counsel for the appellant submits that the learned Appellate Court ought not to have acquitted the Opposite Party No.2 Sheo Shankar Singh without due notice to the complainant. In support of his contention, he has filed entire order sheet of the learned Appellate Court that no notice was ever issued to him. He further submits that section 385 Cr.P.C. deals with the procedure for hearing appeals, not dismissed summarily. He submits that sub clause (1) III of section 385 Cr.P.C. requires that if the appeal is from a judgment of conviction in a case instituted upon complaint, notice ought to be given to the complainant. In support of his contention he relied upon a decision in the case of Chandeshwar Kunwar Vs Ramanand Giri & Ors, 1985 Cr.L.J. 650.

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Learned counsel for the Opposite party states that in an appeal arising from a complaint case, it is not necessary that the complainant be noticed. He submits that in a criminal case if a counsel on behalf of the State appears, it is presumed that he would take care

of the case of the complainant. However, he has not been able to controvert the law laid down by this court in the case of Chandeshwar Kunwar (Supra).

In the circumstances, leave to file an appeal against the impugned judgment is granted.

(S.P.Singh,J)

KHAN

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